

DAE
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PTO/SB/61 (09-04)
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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

13927 B

First Named Inventor: **Hsiu-Hsueh** Art Unit: **3636**
Application Number: **10/662,026** Examiner: **Rodney B. WHITE**
Filed: **September 12, 2003**
Title: **BACKREST FOR METHOD MAKING BACKREST**

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee

- ☒ Small entity - fee \$ **250.00** (37 CFR 1.17(l)). Applicant claims small entity status.
See 37 CFR 1.27.
- ☐ Other than small entity - fee \$ _____ (37 CFR 1.17(l)).

2. Reply and/or fee

- A The reply and/or fee to the above-noted Office action in the form of
Election In Response to Restriction (identify the type of reply):
Requirement
☒ has been filed previously on **August 27, 2004**
☐ is enclosed herewith.
- B The issue fee of \$ _____
☐ has been filed previously on _____
☐ is enclosed herewith.

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

04/26/2005 AWDNAF1 00000031 10662026

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250.00 OP

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Charles E. Baxley
Signature

April 22, 2005
Date

Charles E. Baxley, Esquire
Typed or printed name

20,149
Registration Number, if applicable

90 John Street, Suite 309
Address

212-791-7200
Telephone Number

New York, New York 10038
Address

Enclosure ☒ Fee Payment☐ Reply☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unavoidable delay.
Declaration itemizing documents forwarded timely
☒ to USPTO hereon.

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

April 22, 2005
Date

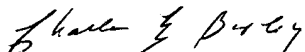
Charles E. Baxley
Signature

Charles E. Baxley, Esquire
Typed or printed name of person signing certificate

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature

Charles E. Baxley, Esquire

Typed or printed name

April 22, 2005

Date

20,149

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

The Serial Number of the Application was mis-typed in an Election and related documents submitted to USPTO on August 27, 2004 timely in response to a Restriction Requirement dated August 16, 2004. The Serial Number was typed "10/661,026" when it should have been - - 10/662,026 - -.

(Please attach additional sheets if additional space is needed.)

IN THE UNITED STATES PATENT & TRADEMARK OFFICE



CEB:rmm
13927 B
22 Apr 05

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

-----X
Applicant : Hsiu-Hsueh WU :
Serial No. : 10/662,026 :
Filed : September 12, 2003 :
Mark : **BACKREST FOR METHOD MAKING BACKREST** :
Art Unit : 3636 :
Examiner. : Rodney B. WHITE :
-----X

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**DECLARATION IN SUPPORT OF PETITION
FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137 (a)**

Charles E. Baxley, Attorney of Record in the above referenced United States Patent Application, (hereinafter sometimes referred to as the "Attorney") being warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statement may jeopardize validity of the Application and a resulting Patent, declares that:

MAILING CERTIFICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail in an envelope addressed to: Mail Stop Petition -Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below:

Charles E. Baxley

Attorney's Name

Charles E. Baxley

Signature

April 22, 2005

Date

1. Because all things required by the Patent Act, Patent Rules and orders and instructions of the Examiner were fully and timely carried out and delivered to the Patent and Trademark Office, it is requested respectfully that no fee be changed for this revival. Stated differently, the abandonment actually was innocent, not even unavoidable - - resulting solely from a typographical mistake in the serial number by a usually very competent secretary who perhaps was distracted.

2. The Attorney is properly authorize to execute the Petition for Revival and this Declaration on behalf of Applicant, and all statements in the Petition and herein of his own knowledge are true and all statements made on information and belief are believed to be true.

3. A Restriction from Patent Examiner Rodney B. WHITE of Art Unit 3636 issued from PTO in this Application on August 16, 2004. The Attorney was instructed on August 26, 2004 to respond to USPTO by filing an Election in response to the Restriction. Enclosed herewith is a copy of a self-explanatory letter herein dated August 26, 2004 from a Taiwanese firm, Taycon marked Exhibit "001."

4. On August 27th the Attorney forwarded to PTO an Election fully responsive to the open Restriction. A copy of the Election with a copy of a forwarding postcard is enclosed herewith. Note that the cover sheet and Election had an incorrect Serial No. "10/661,026" instead of - - 10/662,026 - -. The Election and related documents are designated Exhibit "002."

5. The Attorney received a telephone call from Examiner WHITE on March 3, 2005 inquiring if the Application had been abandoned intentionally. Thereupon the Attorney forwarded to the Examiner on March 3, 2005 a full copy of his transmittal to PTO of August 27, 2004, but again the serial number in the March 3, 2005 transmittal was wrong. A copy of the

March 3, 2005 transmittal to USPTO with related documents are enclosed herewith designated Exhibit "003."

6. The entire delay and fiasco in filing the required Election to the August 16, 2004 Restriction was a result of the serial number of the Application having been mistyped as "10/661,026" instead of - - 10/662,026 - - and copied over again from a series of last document, instead of from an official document. It was not until the Attorney received a Notice of Abandonment that the Attorney became aware of the mistake.

7. The purpose of the present Petition is to correct the mistake and revive the Application which should now qualify for revival and examination on its merits by virtue of the Election and Petition.

8. The attorney regrets very much that the mistake was made, he and the secretary regret that the Examiner was put to trouble and the client's rights were put in jeopardy.

Dated: April 22, 2005

Respectfully,

HART BAXLEY DANIELS & HOLTON

By: Charles E. Baxley
Charles E. Baxley
Attorney of Record
USPTO Reg. 20,149
90 John Street, 3rd Floor
New York, New York 10038
Telephone: (212) 791-7200
Facsimile: (212) 791-7276
E-mail: ceb@hartbaxley.com

CEB:mmm/13927 B

Enclosures: Exhibit "001" through "003" and Notice of Abandonment

TAYCON INTERNATIONAL PATENT & TRADEMARK OFFICE

6F-1, No. 130, Section 2, Chong Der Road, Taichung, Taiwan

PO BOX 63-247, TAICHUNG, TAIWAN.

TEL: 886-4-22377562~3

FAX: 886-4-22378261

E-mail: taycon@ms18.hinet.net

ATTN: Mr. Charles E. Baxley
CHARLES E. BAXLEY
90 John Street, 3rd Floor,
New York, NY 10038
TEL: 1-212-7917200
FAX: 1-212-7917276

August 26, 2004

Our ref.: CFP-2193
Your ref.: 13927 B
U.S. Patent Application No.: 10/662,026
BACKREST AND METHOD FOR MAKING BACKREST
In the name of Hsiu-Hsuen WU

Dear Mr. Baxley,

Thanks for your letter dated 6 October 1999.

Please be informed that the applicant choose Claims 1-3, drawn to a backrest. Please give me a hand to prepare and file an Election responsive to the Restriction Requirement. Thank you for your kind help.

↓
If you have any questions concerning the above, please do not hesitate to contact us. We thank you for your professional assistance with regard to this case.

With best regards, we remain,

26 August 2004

Dear Michael:

Sincerely yours,

Your instructions are being
complied with. Your excellent
cooperation is appreciated.


Michael Tsai

Best regards,

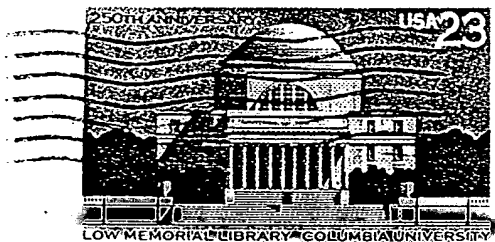
Charles E. Baxley
↑

The official stamp of the U.S. Patent and Trademark Office acknowledges receipt of the following:

1. ELECTION IN REPOSE TO RESTRICTION REQUIREMENT w/MAILING CERTIFICATE;
2. Transmittal Sheet (in duplicate); and
3. Acknowledgment Postcard.

Applicant : Hsiu-Hsueh WU
Serial No. : 10/661,026
Filing Date : September 12, 2003
For : BACKREST AND METHOD FOR MAKING
BACKREST

Date Mailed : August 27, 2004
CEB:lp/13927 B



HART, BAXLEY, DANIELS & HOLTON
90 John Street, Suite 309
New York, NY 10038



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant : Hsiu-Hsueh WU
Serial No. : 10/661,026
Filed : September 12, 2003
For : **BACKREST AND METHOD FOR MAKING BACKEREST**
Examiner : Rodney B. WHITE
Art Unit : 3636
Docket No.: 13927 B

Transmitted herewith is/are the following:

☒ ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT w/MAILING CERTIFICATE

☒ Other Acknowledgment Postcard

☒ The Commissioner is authorized to charge any additional fees required, or to credit any overpayment to Account No. 02-1435. A duplicate copy of this sheet is enclosed.

☐ A check in the amount of \$_ is enclosed.

☒ I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 27, 2004.

Respectfully,



CHARLES E. BAXLEY
Attorney of Record
USPTO REG. 20,149

Dated: August 27, 2004
CHARLES E. BAXLEY, ESQUIRE
Hart, Baxley, Daniels & Holton
90 John Street, Third Floor
New York, New York 10038

Tel: (212) 791-7200
Fax: (212) 791-7276
E-Mail: ceb@hartbaxley.com
CEB:lp/13927B

13927 B
CEB:lp
27 Aug '04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

-----X
Applicant : Hsiu-Hsueh WU :
Serial No. : 10/662,026 :
Filed : September 12, 2003 :
For : BACKREST AND METHOD FOR MAKING BACKREST :
Art Unit : 3636 :
Examiner : Rodney B. WHITE :
-----X

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT

In response to a Restriction dated August 16, 2004, Applicant elects Species I,
Claims 1-3, drawn to a backrest.

MAILING CERTIFICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below:

Charles E. Baxley
Attorney's Name

Charles E. Baxley
Signature

August 27, 2004
Date

Applicant continues to assert allowability of Species II, Claims 4-9, drawn to a method for making the backrest, for purposes of a possible divisional, continuation or continuation-in-part application.

Applicant does not traverse the Restriction.

REMARKS

Restriction to one of the following inventions was required by Examiner Rodney B. WHITE, under authority of 35 USC 121, to one of the following species of invention.

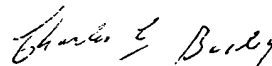
- I. Claims 1-3, drawn to a backrest.
- II. Claims 4-9, drawn to a method for making the backrest.

Applicant has elected Species I, Claims 1-3 drawn to a back rest. Applicant continues to assert allowability of Species II, Claims 4-9 drawn to a method for making the backrest, for the possibility of filing a divisional, continuation or continuation-in-part Application thereon.

Applicant has not traversed the Restriction.

Action on the merits now appears to be in order and is requested.

Respectfully,



CHARLES E. BAXLEY
Attorney of Record
USPTO Reg 20,149
90 John Street, Third Floor
New York, NY 10038
Tel: (212) 791-7200
Fax: (212) 791-7276
E-Mail:ceb@hartbaxley.com

CEB:lp/13927B

The official stamp of the U.S. Patent and Trademark Office acknowledges receipt of the following:

1. ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT w/MAILING CERTIFICATE;
2. Transmittal Sheet (in duplicate); and
3. Acknowledgment Postcard.

Applicant : Hsiu-Hsueh WU
Serial No. : 10/661,026
Filing Date : September 12, 2003
For : BACKREST AND METHOD FOR MAKING
BACKREST

Date Mailed : August 27, 2004
CEB:lp/13927 B

MODE = MEMORY TRANSMISSION

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END=MAR-03 15:31

FILE NO.=190

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-HBDH

***** -HBDH

- ***** -

212 791 7276- *****

HART, BAXLEY, DANIELS & HOLTON
 90 JOHN STREET, SUITE 309
 NEW YORK, NY 10038

Phone: (212) 791-7200

Fax: (212) 791-7276

TELECOPIER COVER PAGE

DATE: March 3, 2005

OUR REF: 13927 B

TO	COMPANY	FAX NUMBER
Examiner Rodney B. WHITE	U.S. Patent and Trademark Office	1-703-308-3519

FROM: Charles E. Baxley

6 Pages

(INCLUDING COVER SHEET)

RE: This firm's reference 13927 B
 US Pat Appln 10/661,026 - 12 Sep 03
BACKREST AND METHOD FOR
MAKING BACKREST
Mr. Hsiu-Hsueh WU, Inventor

Dear Examiner WHITE:

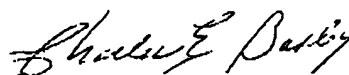
As you requested, attached hereto are the following documents that were forwarded to USPTO on August 24, 2005 in response to a Restriction Requirement:

1. Copy of date stamped acknowledgment postcard;
2. Copy of this firm's transmittal sheet; and
3. Copy of Election in Response to Restriction Requirement w/Certificate of Mailing.

If you need anything further, let me know.

Your courtesy, cooperation and skill are appreciated.

Respectfully,



Charles E. Baxley

CEB:lcr/13927 B
 Attachment

HART, BAXLEY, DANIELS & HOLTON
90 JOHN STREET, SUITE 309
NEW YORK, NY 10038

Phone: (212) 791-7200

Fax: (212) 791-7276

TELECOPIER COVER PAGE

DATE: March 3, 2005

OUR REF: 13927 B

TO	COMPANY	FAX NUMBER
Examiner Rodney B. WHITE	U.S. Patent and Trademark Office	1-703-308-3519

FROM: Charles E. Baxley

6 Pages
(INCLUDING COVER SHEET)

RE: This firm's reference 13927 B
US Pat Appln 10/661,026 - 12 Sep 03
**BACKREST AND METHOD FOR
MAKING BACKREST**
Mr. Hsiu-Hsueh WU, Inventor

Dear Examiner WHITE:

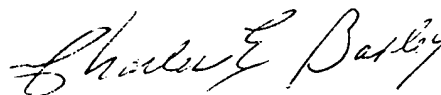
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1. Copy of date stamped acknowledgment postcard;
2. Copy of this firm's transmittal sheet; and
3. Copy of Election in Response to Restriction Requirement w/Certificate of Mailing.

If you need anything further, let me know.

Your courtesy, cooperation and skill are appreciated.

Respectfully,



Charles E. Baxley

CEB:lcr/13927 B
Attachment



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,026	09/12/2003	Hsiu-Hsueh Wu	13927 B	9289

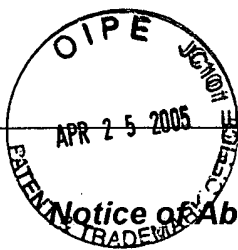
7590 04/11/2005
CHARLES E. BAXLEY, ESQUIRE
Third Floor
90 John Street
New York, NY 10038



EXAMINER	
WHITE, RODNEY BARNETT	
ART UNIT	PAPER NUMBER
3636	

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



Notice of Abandonment

Application No.

10/662,026

Examiner

Rodney B. White

Applicant(s)

WU, HSIU-HSUEH

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 16 August 2004.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

RODNEY B. WHITE
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

12

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